Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

Merle Richard Schmidt

Petitioner

vs.

Thomas Buchanan

Respondent

On Petition for Writ of Certiorari
To The Supreme Court of Iowa

Petition for Common Law Writ of Certiorari

Merle Richard Schmidt
C/O P.O. Box 416
Victor, Iowa 52347-0416
Phone: 319-685-6222
Without counsel of record

BRIEF INTRODUCTORY STATEMENT

Under color of his office of a magistrate, Respondent Thomas Buchanan maliciously uses non-appealable accusatory processes (contempt) to inflict injury without cause while in want of jurisdiction.

QUESTION PRESENTED

Does a person employed as a County Magistrate have lawful authority to continually incarcerate people in the County jail, maliciously and without cause or reason, while using administrative non-appealable accusatory processes to abrogate free speech under color of "absolute judicial immunity?"

LIST OF ALL PARTIES

Merle Richard Schmidt, Petitioner
c/o P.O. Box 416
Victor, Iowa 52347-0416
(319) 685-6222

Thomas Buchanan, Respondent
Represented by: Julie Burger
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5531

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS

Iowa County	No. LACV022129
Iowa Court of Appeals	No. 05-896
Iowa Supreme Court	No. 05-0655

STATEMENT OF THE BASIS FOR JURISDICTION

The date on which the highest state court decided my case was February 28, 2006. A copy of that decision appears at Appendix page 1.

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. §1651.

CONSTITUTIONAL PROVISIONS

"No person shall be deprived of life, liberty, or property, without due process of law." Iowa Constitution, Article I, SEC. 9 (Amendment V of the federal Constitution)

STATEMENT OF THE CASE

In blatant violation of mandatory Iowa Disciplinary Rule DR7-105 by Iowa County Attorney Lewis McMeen, individuals including Merle Schmidt have been inundated with many, many, criminal charges solely for the Iowa County Attorney to gain civil advantage over title to soil. Accordingly, dismissals have occurred in Iowa County criminal case numbers SMAC063924, SMAC063925, and SMAC064328.

After a pre-trial hearing on several misdemeanor charges, at or about 10:05 A.M. on December 17, 2002 Iowa County Attorney Lewis McMeen vowed to Schmidt in a very angry voice, "You're going to learn not to mess with the County Attorney." Schmidt was later found guilty in bench trial on three misdemeanor charges of trespass. Upon the Iowa County Magistrate being put on notice that the defendant's "presumption of innocence" could not be destroyed with "presumptive evidence," the files all disappeared from the Iowa County Courthouse in case numbers SMAC063244, SMAC063251, and SMAC063465.

In 2003, Lance Tod Schaefer and Schmidt were summoned to appear under selective prosecution by Iowa County Sheriff's officials for misdemeanor charges. On the morning of May 27, 2003 Schaefer and Schmidt did defend in magistrate's court at which time Thomas Buchanan indicated that "justice was on a time clock and he was tired" and incarcerated Lance Schaefer for seven days for contempt without lawful cause or reason. Thomas Buchanan and County Attorney Lewis McMeen then promptly went golfing together and had a late supper in Cedar Rapids.

With Schmidt defending before Thomas Buchanan just prior to Schaefer being incarcerated, Schmidt was subsequently found guilty on two unsigned "no driver's license" traffic citations for failure to appear in case numbers STWG749192 and STWG749193.

A Petition to vacate a void judgment is not familiar to the Iowa District Court and the Iowa Supreme Court has refused to execute justice by vacating the void judgments of traffic convictions for failure to appear in Iowa Supreme Court case number 05-0383.

With magistrate court being in want of jurisdiction over the person, Schmidt did not pay the alleged traffic fines levied for failure to appear when justice was on a time clock in Thomas Buchanan's court.

Schmidt was subsequently using a farm tractor on a dirt road to tend cows, all in harmony with Iowa Code section 321.176. Apparently upon directions of Iowa County Attorney Lewis McMeen, Sheriff James Slockett mailed a citation for using a farm tractor under suspension, and Schmidt was ordered to appear on March 2, 2004. With the ongoing conspiracy in Iowa County, Schmidt was incarcerated for seven days for contempt without any justification or due process, at which time Sheriff James Slockett stated to Schmidt, "If you mess with the bull, you're gonna get the horn."

Schmidt's magistrate contempt conviction was later annulled upon Certiorari proceedings in the Iowa District Court.

In harmony with Hafer v. Melo, Schmidt filed a suit for damages against Thomas Buchanan in his personal capacity as Schmidt's only remedy to end Buchanan's non-appealable actions under color of law. The suit was dismissed in the Iowa District Court under the doctrine of

"absolute judicial immunity." After dismissal of suit in the Iowa District Court, Thomas Buchanan then commingled law with equity under color of "absolute judicial immunity," in violation of Article V, Sec. 6, of the Iowa Constitution and AGAIN incarcerated both Schaefer and Schmidt "per Equity Civil Order," all while Buchanan is clearly DISQUALIFIED pursuant to Iowa Code Section 602.1606.

The latest in the conspiracy against Schmidt, and in violation of Iowa Disciplinary Rule 7-105 by the County Attorney to gain civil advantage over title to soil, are case numbers CISMAC064336 and CISMAC064371. Even though Thomas Buchanan is disqualified with this suit for damages pending against him, Buchanan does not recuse himself and continues to file Orders in favor of his golfing friend Lewis McMeen and schedule bench trial while Buchanan wilfully violates Iowa Rule of Criminal Procedure 2.11(8) and rule 2.52. Thomas Buchanan and County Attorney Lewis McMeen act in concert to refuse to inform the accused of the nature and cause of criminal accusations.

Petitioner's Appendix sets forth the Order from the Iowa Supreme Court thereby denying this Petitioner's Application for Further Review of the Iowa Court of Appeals.

ARGUMENT

The present gravemen was brought before the Iowa district court, not on a motion for summary judgment but on a motion to dismiss. Thomas Buchanan's counsel has admitted the facts stated in Plaintiff Schmidt's Petition. Accordingly, there cannot be any disputed questions of fact at this stage. The courts must construe the complaint

in the light most favorable to the plaintiff, and accept all factual allegations as true.

As shown, Thomas Buchanan was attempting to acquire jurisdiction over state Citizen Schmidt in soliciting a plea. Want of jurisdiction was made apparent to Thomas Buchanan as Buchanan was holding in his hand Schmidt's initial pleading challenging Buchanan's jurisdiction.

> "There is no presumption in favor of the jurisdiction of courts of inferior, limited, or special jurisdiction, or in favor of the jurisdiction of inferior magistrates or tribunals exercising judicial functions. Jurisdiction in such cases must affirmatively appear, and the facts conferring jurisdiction must be affirmatively found to exist. However, it is within the constitutional power of the legislature to change this rule.
>
> Mere exercise of jurisdiction by such courts does not raise a presumption of the existence of the requisite jurisdictional facts. One who relies on a decision or benefit under its proceedings, must affirmatively show its jurisdiction by alleging and proving it. This rule applies to jurisdiction both of the person, and of the subject matter." 21 C.J.S. § 75.

This Petitioner, Merle Richard Schmidt, is nearly certain that Thomas Buchanan will again wilfully abrogate free speech and sentence Schmidt to jail for contempt without cause or reason if Schmidt again appears in person before Thomas Buchanan to defend against criminal charges that are presented by Buchanan's golfing friend Lewis McMeen, all while Lewis McMeen violates mandatory Iowa Disciplinary Rule 7-105 such as in said Iowa County case numbers CISMAC064336 and

CISMAC064371.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." MIRANDA v. ARIZONA, 384 U.S. 436 (1966)

WHEREFORE, Petitioner requests relief as the Court deems appropriate to stop the wilful abuse of power under color of law and that all costs be assessed to the Respondent.

CONCLUSION

Accusatory processes, such as non-appealable contempt, are not judicial acts subject to judicial immunity. Jurisdiction is a prerequisite to judicial immunity and Thomas Buchanan acted in absence of jurisdiction over the person. Thomas Buchanan has failed the two prong test to qualify Buchanan for absolute judicial immunity. The petition for writ of certiorari should be granted.

Respectfully submitted,

Merle Richard Schmidt

Merle Richard Schmidt
C/O P.O. Box 416
Victor, Iowa 52347-0416

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct as I verily believe. Executed on:

April 6, 2006 — Date

Merle Richard Schmidt — Signature